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OGC Has Reviewed

MEMORANDUM: FOR THE RECORD.

SUBJECT: PROPOSED REVISIONS OF THE ESPIONAGE LAWS.

I conferred this morning with Mr. Elmer Staats, Chief of the Legislative Liaison Division of the Bureau of the Budget, in regard to the proposed revisions of the espionage laws as contained in the so-called omnibus bill.

This bill originated with discussions in the summer of 1946 in an interdepartmental committee representing the War and Navy Departments and the F.B.I. Their proposals were made available to us at that time on an informal basis by the Department of Justice. Subsequently, comments were solicited from the Department of State and the Department of the Treasury and the Federal Communications Commission.

The result of these conferences was an omnibus bill "relating to the internal security of the United States," to which the Treasury Department vigorously dissented in several particulars.

The President of the United States is strongly and personally interested in this legislation and is giving it his personal attention. The Bureau of the Budget has cleared the bill, subject to Treasury and Justice being able to work out their present differences.

I informed Mr. Staats that CIA had never been consulted in connection with this bill, but that there were several sections of it which appeared objectionable to us, and which I discussed with him at some length, insofar as security would permit. Mr. Staats stated that he was probably going to discuss the bill with the White House, and would indicate our interest. However, he could not reach a decision at this time as to whether the bill would go forward after Treasury and Justice had reached a decision, or whether it might be necessary to sit down again with all interested agencies, in an attempt to come to an answer. If the latter procedure is followed, CIA would be called in.

Mr. Staats felt that he could not make the Treasury comments available to us at this time, as he did not wish to make them available separately without showing us the entire file. However, he read the Treasury comments to me, with permission to make notes, on condition that we did not indicate the source of these comments in any document we prepared for the Hoover Commission.

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The Treasury felt that, rather than try to write the first section of the proposed bill (pages 1 and 2) in the form of amendments to the Espionage Act, it might be better to write it as a new section 1 of the new proposal.

The Treasury also felt, in connection with the proposed revision of the Espionage Act itself, that, in the amendments contained in subsections (d) and (e) of Section 1 and Section 4 of Title I of the Espionage Act, in lieu of the word "willfully", a requirement of intent or reason to believe that the information would be used to injure the United States should be included. The Treasury further proposed, in connection with these offenses, that various degrees of offenses and penalties for them should be set up on a graduated classification basis. In support of this contention, certain provisions of the Atomic Energy Act of 1946 were cited. They further recommended an additional section to take care of irresponsible transmission of information affecting the national security with a reckless disregard for the consequences of such transmission.

The Treasury also recommended the inclusion of a provision similar to Section 10(b)(5) of the Atomic Energy Act, which provides that no person should be prosecuted for a violation until the Attorney General has advised with respect to such prosecution, and under his special direction.

The Treasury also commented that there was presently in existence a general law (5 U.S.C. 652) providing for the removal of employees which would serve to take care of petty offenses.

In connection with Section 4(a) of the proposed bill (page 4), I stated that CIA would have strong objections to the amendment which would require the registration as the agent of a foreign principal of any person who had knowledge of or who had received instruction in the espionage, counter-espionage, or sabotage service or tactics of a government of a foreign country or a foreign political party. I told Mr. Staats that it was our opinion that such a section would include a roster of many members of the CIA staff who had received knowledge of or instruction in these matters in connection with their official duties, and that the supplying of these names in a roster would be a serious breach of our security.

Mr. Staats stated that the State Department had originally taken the same position, on the basis that it would mean the registration of many former members of their staff, as well as the intelligence reserve of the armed services, and that for

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these reasons the State Department objected to the provisions. However, the Department of Justice felt that it would be extremely helpful to them if such a roster of trained personnel were available, so that they could call on specific persons with such training if the need arose. The Department of Justice position was exactly as set forth in the bill, namely, that all such people should be required to register. The Department of Treasury commented that they were dissatisfied with this provision for the same reason as the State Department, particularly as it would require the registration of many members of the Secret Service. The Treasury therefore proposed to exclude all persons who received training or information in this connection while in the Government service. It should be pointed out, however, that this exception should be carefully worded so as not to leave a loophole of escape to those who receive the information in the Government service and then put it to illegal use after leaving the Government.

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In connection with the Treasury's comments on this section, they suggested that the chief of the department be required to certify that the telephone interception was a necessity in a major case, and that he include the names, addresses, phone lines to be tapped, and the purpose of tapping, in each instance. Treasury pointed out that these provisions were similar to S. 3756 of the 75th Congress, which passed both houses of Congress, but which was subsequently hung up, it is believed, in conference, when the Treasury withdrew its support. The Treasury further suggested that the information as to names, addresses, telephone lines to be tapped and the purpose of tapping in each instance be presented to a federal magistrate in a form equivalent to a search warrant. This is similar to the procedure set forth in Article 1, Section 12 of the New York State Constitution, and Section 813(a) of the New York State Code on criminal procedures.

In connection with the interception of telegraph, radio and cable messages, Treasury suggests the inclusion of a requirement that these interceptions should be made under rules promulgated by the head of the Department involved -- by the Attorney General rather than the Director of the Federal Bureau of Investigation, by the Secretary of the Treasury rather than by the Chief of the Secret Service.

In connection with Paragraph 6, Treasury raised certain objections as to the overlap of authority between the Secretary of the Navy and the Secretary of the Treasury.

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